

component (c) in claim 1. The Examiner is citing Schmitt and the two Derwent Abstracts as references that disclose elements that were recited in the claims prior to the Amendment under 37 C.F.R. § 1.111 filed November 24, 2004. Accordingly, the Examiner could have, but did not, cite Schmitt and the two Derwent abstracts in the former Office Action and Applicants' Amendment filed November 24, 2004 did not necessitate the new ground of rejection. Therefore, Applicants submit that it is not proper for the Examiner to make the next Office Action final and respectfully request that the Examiner withdraw the finality of the Office Action. See MPEP § 706.07(a).

Claims 1 and 4-10 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Schmitt et al., U.S. Patent No. 5,389,300 ("Schmitt") in view of Derwent abstracts 1993-206225 and 1978-57608A.

Schmitt discloses an agent for protecting sawn timber against wood-discolouring fungi comprising new active compound combination of at least one phenol derivative and at least one iodopropargyl derivative of the formula (I). (See, column 1, lines 4-6 and column 1, line 51-column 2, line 6). That is, Schmitt discloses a combination of a phenol derivative and a iodopropargyl derivative.

On the contrary, the present invention is a pesticidal emulsifiable concentrate comprising (a) 1 to 60% by weight of a pyrethroid compound, (b) 2 to 15% by weight of at least one surfactant and (c) 15 to 90% by weight of at least one aromatic ester solvent represented by the formula [1] as in claim 1. The present invention is a low-irritant pesticidal emulsifiable

concentrate which can be used as an emulsion which is superior in emulsion stability after diluting with water. (See, page 1, line 24 to page 2, line 16 of the specification).

As the Examiner points out, Schmitt discloses pyrethroids as additive compounds, however, Schmitt discloses numerous additive compounds other than pyrethroids. (See, column 3, line 35 to column 4, line 48). Schmitt does not disclose a pesticidal emulsifiable concentrate comprising pyrethroids. Further, while Schmitt discloses additive compounds, Schmitt does not disclose a pesticidal emulsifiable concentrate comprising the additive compounds. Thus, the present invention would not be anticipated and/or obvious over Schmitt.

Schmitt discloses a large number of combinations of components and the amounts thereof. However, Schmitt does not suggest combining the components of the present invention and the Examiner has not provided reasoning why one skilled in the art would select the same combination of components as recited in the claimed invention from the numerous combinations disclosed in Schmitt.

The Examiner has not considered the characteristic of Schmitt's invention and has only made the combination of components in Schmitt based on hindsight of the present invention, which is impermissible.

Applicants submit that the Derwent abstracts do not make up for the deficiencies in Schmitt.

In view of the foregoing, Applicants submit that the present invention would not be obvious over Schmitt in view of the Derwent abstracts. Therefore, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

RESPONSE UNDER 37 C.F.R. § 1.116
U.S. Application No.: 10/663,843

Attorney Docket Q77444

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

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CUSTOMER NUMBER

for *Jennifer Leach* / Jennifer Leach
Fang Liu
Registration No. 51,283
Reg No. 54,257

Date: August 23, 3005